

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID BREKSA a/k/a DAVID BRESKA,

Plaintiff,

v.

**9:12-CV-952
(FJS/RFT)**

**SERGEANT RICE, Correctional Sergeant, Clinton
Correctional Facility; and JOHN DOE, Correctional
Officer, Clinton Correctional Facility**

Defendants.

APPEARANCES

OF COUNSEL

DAVID BREKSA

11-A-2493

Auburn Correctional Facility

135 State Street

Box 618

Auburn, New York 13021

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendant

GREGORY J. RODRIGUEZ, AAG

SCULLIN, Senior Judge

ORDER

Currently before the Court is Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order, in which he recommended that this Court grant Defendant Rice's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Dkt. 12. The parties did not file any objections to this recommendation.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, *10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order for clear error and manifest injustice; and, finding none, the Court hereby

ORDERS that Magistrate Judge Treece's September 3, 2013 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further


ORDERS that Defendant Rice's motion to dismiss is **GRANTED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: September 24, 2013
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge